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Attorneys for Defendants and Counterclaimants
O-Net Communications (Shenzhen) Limited,
Multiwave Digital Solutions, Inc. and
Chunmeng Wu, an individual

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OPLINK COMMUNICATIONS, INC.,

Plaintiff,

v.

O-NET COMMUNICATIONS
(SHENZHEN) LIMITED, MULTIWAVE
DIGITAL SOLUTIONS, INC.,
CHUNMENG WU, an individual,

Defendants.

Case No. CV 07-4582 MJJ

**DECLARATION OF CAROLYN CHANG IN
SUPPORT OF DEFENDANTS' OPPOSITION
TO OPLINK COMMUNICATIONS, INC.'S
MOTION TO STRIKE DEFENDANTS'
AFFIRMATIVE DEFENSES AND DISMISS
THEIR COUNTERCLAIMS**

Date: November 27, 2007
Time: 9:30 a.m.
Location: Courtroom 11, 19th Floor
Judge: The Honorable Martin J. Jenkins

1 I, Carolyn Chang, declare and state as follows:

2 1. I am an attorney at the law firm of Fenwick & West LLP, counsel for Defendants
3 O-Net Communications (Shenzhen) Limited, Multiwave Digital Solutions, Inc., and Chunmeng
4 Wu ("Defendants") in this matter. I am licensed to practice law in the State of California and
5 before this Court. I make this declaration in support of Defendants' Opposition to Plaintiff's
6 Motion to Strike Defendants' Affirmative Defenses and Dismiss Their Counterclaims. I make
7 this declaration of my own personal knowledge and would competently testify thereto if called
8 upon to do so.

9 2. Attached as Exhibit A to this Declaration is a copy of Defendants' proposed First
10 Amended Answer and Counterclaims.

11 3. Attached as Exhibit B to this Declaration is a redline showing the proposed
12 changes between Defendants' proposed First Amended Answer and Counterclaims (Exhibit A)
13 and Defendants' September 17, 2007 Answer to Complaint, Affirmative Defenses and
14 Counterclaims.

15 4. On Tuesday, October 30, 2007, I contacted Samuel O'Rourke, counsel for Plaintiff
16 Oplink Communications, Inc. ("Plaintiff") to discuss Defendants' filing of an amended answer
17 and counterclaim to resolve concerns raised in Plaintiff's Motion to Strike. On Thursday,
18 November 1, 2007, I sent Plaintiff's counsel a copy of Defendants' proposal, seeking Plaintiff's
19 stipulation to file the amended answer and counterclaims.

20 5. On Monday, November 5, 2007, counsel for Plaintiff indicated that Plaintiff would
21 not stipulate to filing of the amended answer as it only addressed a subset of Plaintiff's concerns.
22 Moreover, Plaintiff's counsel indicated that Plaintiff would not be interested in a stipulation to
23 resolve Plaintiff's Motion to Strike unless the parties could also concurrently reach a resolution
24 with respect to Defendants' Motion to Dismiss.

25 6. I informed Plaintiff's counsel that Defendants would consider taking their Motion
26 to Dismiss off calendar if Plaintiff withdrew its willfulness and inducement of infringement
27 allegations, or if Plaintiff had a basis to amend their complaint to allege Defendants' actual
28 knowledge of the patents prior to the filing of the complaint, objective recklessness on the part of

1 Defendants, and a specific intent to induce infringement of the patents in suit. Plaintiff's counsel
2 indicated that Plaintiff would not agree to such an amendment and has not proposed any alternate
3 amendment.

4 I declare under the penalty of perjury that the foregoing is true and correct to the best of
5 my knowledge and that this Declaration was executed on November 6, 2007 in Mountain View,
6 California.

7
8 /s/Carolyn Chang
9 Carolyn Chang

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SAN FRANCISCO

EXHIBIT A

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Attorneys for Defendants and Counterclaimants
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oplink Communications, Inc.,
Plaintiff,

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O-Net Communications (Shenzhen)
Limited,
Multiwave Digital Solutions, Inc.,
Chunmeng Wu, an individual,
Defendants.

Case No. CV 07-4582 MJJ

**DEFENDANTS' FIRST AMENDED
ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Date of Filing: September 17, 2006
Trial Date: None set

FIRST AMENDED ANSWER

Defendants O-Net Communications (Shenzhen) Limited ("O-Net Shenzhen"), Multiwave Digital Solutions, Inc. ("Multiwave") and Mr. Chunmeng Wu ("Wu") (collectively "Defendants") answer the First Amended Complaint ("Complaint") of plaintiff Oplink Communications, Inc.

1 (“Oplink”), following its numbered paragraphs, as follows:

2 **Parties**

3 1. Regarding paragraph 1 of the Complaint, Defendants are informed and believe that
4 Oplink is a Delaware corporation with its principal place of business at 46335 Landing Parkway,
5 Fremont, California 94538. Defendants lack knowledge or information sufficient to form a belief
6 as to the truth or falsity of the remaining allegations in paragraph 1 of the Complaint and
7 therefore deny them.

8 2. Regarding paragraph 2 of the Complaint, Defendants admit that O-Net Shenzhen
9 is a Chinese company with its principal place of business at #10-1 South, Maqueling Industrial
10 Park, Nanshan District of Shenzhen, China. O-Net Shenzhen avers that is a leading Original
11 Equipment Manufacturer (“OEM”) and Original Design Manufacturer (“ODM”), which supplies
12 a variety of products to the global optical networking industry. Except as expressly admitted or
13 averred, the remaining allegations of paragraph 2 are denied.

14 3. Regarding paragraph 3 of the Complaint, Defendants admit that Multiwave is a
15 Texas corporation with a place of business in Fremont, California. Defendants further admit that
16 Multiwave is an exclusive sales representative for O-Net Shenzhen products sold in the United
17 States. Except as expressly admitted or averred, the remaining allegations of paragraph 3 are
18 denied.

19 4. Regarding paragraph 4 of the Complaint, Defendants admit that Wu is an
20 individual who resides within the Northern District of California. Defendants aver that Wu was
21 employed by Oplink until September 2006, and that he is a current employee of Multiwave.
22 Except as expressly admitted or averred, Defendants deny the allegations in paragraph 4 of the
23 Complaint.

24 **Jurisdiction and Venue**

25 5. Regarding paragraph 5 of the Complaint, Defendants admit that the Complaint
26 purportedly alleges claims arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et*
27 *seq.*, and the statutory and common law of the State of California.

28 6. Regarding paragraph 6 of the Complaint, Defendants admit that the Northern

1 District of California has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
 2 1331 and 1338(a), and has supplemental jurisdiction over the state law claims under 28 U.S.C.
 3 § 1367(a).

4
 5 7. Regarding paragraph 7 of the Complaint, Defendants admit that under 28 U.S.C.
 6 §§ 1391 and 1400, venue is proper in the Northern District of California, where Wu resides and
 7 Multiwave has a place of business. Except as expressly admitted or averred, Defendants deny the
 8 allegations in paragraph 7 of the Complaint

9 **Oplink's Patents In Suit**

10 8. Regarding paragraph 8 of the Complaint, Defendants admit that U.S. Patent No.
 11 5,661,829 ("829 Patent"), entitled "Optical Isolator," was issued by the Patent and Trademark
 12 Office on August 26, 1997. Except as expressly admitted, Defendants deny the allegations of
 13 paragraph 8 of the Complaint.

14 9. Regarding paragraph 9 of the Complaint, Defendants admit that U.S. Patent No.
 15 6,215,919 ("919 Patent"), entitled "Mechanical Optical Switching Device," was issued by the
 16 Patent and Trademark Office on April 10, 2001. Except as expressly admitted, Defendants deny
 17 the allegations of paragraph 9 of the Complaint.

18 10. Regarding paragraph 10 of the Complaint, Defendants admit that U.S. Patent No.
 19 6,895,129 ("129 Patent"), entitled "Optical Circulator," was issued by the Patent and Trademark
 20 Office on May 17, 2005. Except as expressly admitted, Defendants deny the allegations of
 21 paragraph 10 of the Complaint.

22 11. Defendants lack knowledge or information sufficient to form a belief as to the
 23 truth or falsity of the allegations in paragraph 11 of the Complaint and therefore deny them.

24 **First Claim for Relief**

25 **Infringement of U.S. Patent No. 5,661,829**

26 **(Against O-Net Shenzhen and Multiwave)**

27 12. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to
 28 paragraphs 1-11 of this Answer as though fully set forth herein.

1 13. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 13 of
2 the Complaint.

3 14. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny
4 the allegations contained in paragraph 14 of the Complaint.

5 15. Regarding paragraph 15 of the Complaint, O-Net Shenzhen and Multiwave aver
6 that prior to the receipt of the Original Complaint of plaintiff Oplink filed in the Central District
7 of California on June 7, 2007, they had no notice of Oplink's allegations or charges of
8 infringement, that they have not engaged in any conduct that is objectively reckless with respect
9 to the '829 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-
10 Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny
11 the allegations contained in paragraph 15 of the Complaint.

12 16. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 16 of
13 the Complaint.

14 **Second Claim for Relief**

15 **Infringement of U.S. Patent No. 6,215,919**

16 **(Against O-Net Shenzhen and Multiwave)**

17 17. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to
18 paragraphs 1-16 of this Answer as though fully set forth herein.

19 18. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 18 of
20 the Complaint.

21 19. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny
22 the allegations contained in paragraph 19 of the Complaint.

23 20. Regarding paragraph 20 of the Complaint, O-Net Shenzhen and Multiwave aver
24 that prior to the receipt of the Original Complaint of plaintiff Oplink filed in the Central District
25 of California on June 7, 2007, they had no notice of Oplink's allegations or charges of
26 infringement, that they have not engaged in any conduct that is objectively reckless with respect
27 to the '919 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-
28 Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny

1 the allegations contained in paragraph 20 of the Complaint.

2 21. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 21 of
3 the Complaint.

4 **Third Claim for Relief**

5 **Infringement of U.S. Patent No. 6,895,129**

6 **(Against O-Net Shenzhen and Multiwave)**

7 22. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to
8 paragraphs 1-21 of this Answer as though fully set forth herein.

9 23. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 23 of
10 the Complaint.

11 24. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny
12 the allegations contained in paragraph 24 of the Complaint.

13 25. Regarding paragraph 25 of the Complaint, O-Net Shenzhen and Multiwave aver
14 that prior to the receipt of the Complaint of plaintiff Oplink filed in the Central District of
15 California on August 25, 2007, they had no notice of Oplink's allegations or charges of
16 infringement, that they have not engaged in any conduct that is objectively reckless with respect
17 to the '129 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-
18 Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny
19 the allegations contained in paragraph 25 of the Complaint.

20 26. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 26 of
21 the Complaint.

22 **Fourth Claim for Relief**

23 **Trade Secret Misappropriation Under the Uniform Trade Secrets Act**

24 **(Against Multiwave and Wu)**

25 27. Multiwave and Wu hereby incorporate by reference their responses to paragraphs
26 1-26 of this Answer as though fully set forth herein.

27 28. Multiwave and Wu lack knowledge or information sufficient to form a belief as to
28 the truth or falsity of the allegations in paragraph 28 and therefore deny them.

29. Multiwave and Wu lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 29 and therefore deny them.

30. Regarding paragraph 30 of the Complaint, Wu admits that he is a former Oplink employee, that he began his employment with Oplink on or about August 29, 2003, and that he left that employ on or about September 8, 2006. Defendant Wu admits that he signed a document entitled, "Employee Confidential Information and Inventions Agreement," and a document entitled, "Separation Agreement." Except as expressly admitted, Defendant Wu denies the allegations of paragraph 30. Except as expressly admitted, Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 30 and therefore denies them.

31. Multiwave and Wu deny the allegations contained in paragraph 31 of the Complaint.

32. Regarding paragraph 32 of the Complaint, Multiwave and Wu admit that Wu became an employee of Multiwave subsequent to his employment by Oplink and that Wu is currently a Multiwave employee. Multiwave and Wu further admit that Multiwave is an exclusive sales representative for O-Net Shenzhen products sold in the United States. Except as expressly admitted, Multiwave and Wu deny the allegations of paragraph 32.

33. Multiwave and Wu deny the allegations contained in paragraph 33 of the Complaint.

34. Multiwave and Wu deny the allegations contained in paragraph 34 of the Complaint.

35. Multiwave and Wu deny the allegations contained in paragraph 35 of the Complaint.

Fifth Claim for Relief

Breach of Duty of Loyalty

(Against Wu)

36. Wu hereby incorporate by reference his responses to paragraphs 1-35 of this

1 Answer as though fully set forth herein.

2 37. Regarding paragraph 37 of the Complaint, Wu admits that he held the title of
3 Senior Director of Business Development and Customer Support for Oplink. Except as expressly
4 admitted, he denies the allegations contained in paragraph 37 of the Complaint.

5 38. Regarding paragraph 38 of the Complaint, Wu admits that he recommended that
6 Oplink enter into a sales representation agreement with Multiwave, but avers that any decision
7 regarding whether to enter into such an agreement and its terms was made by others at Oplink.
8 Wu admits that he had previously worked with Multiwave at another employer. Except as
9 expressly admitted, Wu denies the allegations contained in paragraph 38 of the Complaint.

10 39. Wu lacks knowledge or information sufficient to form a belief as to the truth or
11 falsity of the allegations in paragraph 39 and therefore denies them

12 40. Wu denies the allegations contained in paragraph 40 of the Complaint.

13 41. Wu denies the allegations contained in paragraph 41 of the Complaint.

14 42. Wu denies the allegations contained in paragraph 42 of the Complaint.

15 43. Wu denies the allegations contained in paragraph 43 of the Complaint.

16 **Sixth Claim for Relief**

17 **Unfair Competition**

18 **(Against Multiwave)**

19 44. Multiwave hereby incorporates by reference its responses to paragraphs 1-43 of
20 this Answer as though fully set forth herein.

21 45. Multiwave denies the allegations contained in paragraph 45 of the Complaint.

22 46. Multiwave denies the allegations contained in paragraph 46 of the Complaint.

23 **Seventh Claim for Relief**

24 **Breach of Contract**

25 **(Against Wu)**

26 47. Wu hereby incorporates by reference his responses to paragraphs 1-46 of this
27 Answer as though fully set forth herein.

28 48. Wu admits that he signed a document entitled, "Employee Confidential

Information and Inventions Agreement.” Except as expressly admitted, Wu denies the allegations of paragraph 48.

49. Wu admits that he signed a document entitled, “Separation Agreement.” Except as expressly admitted, Wu denies the allegations of paragraph 49.

50. Wu lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50 and therefore denies them.

51. Wu denies the allegations contained in paragraph 51 of the Complaint.

52. Wu denies the allegations contained in paragraph 52 of the Complaint.

Eighth Claim for Relief

Intentional Interference with Contractual Relations

(Against Multiwave)

53. Multiwave hereby incorporates by reference its responses to paragraphs 1-52 of this Answer as though fully set forth herein.

54. Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 54 and therefore denies them.

55. Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 55 and therefore denies them.

56. Multiwave admits that it was aware that Wu was formerly employed by Oplink and had signed agreements relating to his employment. Except as expressly admitted, Multiwave denies the allegations of paragraph 56.

57. Multiwave denies the allegations contained in paragraph 57 of the Complaint.

58. Multiwave denies the allegations contained in paragraph 58 of the Complaint.

REQUESTED RELIEF BY OPLINK

Defendants deny that Oplink is entitled to any relief

AFFIRMATIVE DEFENSES

Defendants hereby assert affirmative defenses to the Complaint as follows:

First Affirmative Defense

1 **Failure To State A Claim**

2 59. As a first and separate affirmative defense, Defendants allege that the Complaint,
3 in whole or in part, fails to state a claim upon which relief can be granted.

4 60. O-Net Shenzhen and Multiwave, *inter alia*, have moved to dismiss Oplink's
5 allegations of inducement of infringement in paragraphs 14, 19 and 24 of the Complaint and
6 Oplink's allegations of willful infringement in paragraphs 15, 20 and 25 of the Complaint, or,
7 alternatively, for a more definite statement, as well as to strike the requests for relief related to
8 these allegations.

9 **Second Affirmative Defense**

10 **Invalidity**

11 61. As a second and separate affirmative defense to Oplink's patent claims,
12 Defendants allege that the claims of the '829 Patent, the '919 Patent and/or the '129 Patent are
13 invalid.

14 62. The '829 Patent is invalid for failure to meet the Conditions of Patentability of 35
15 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject
16 matter; or was used or known by others in this country or was patented or described by a
17 publication before its invention; or was patented or described in a publication or was in public use
18 or for sale more than one year before the date of the patent application; or was not invented by the
19 named inventors; or was invented by another prior to the alleged invention; or was taught by,
20 suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper
21 written description; or is not enabling; or does not disclose the best mode of the invention; and no
22 claim of the '829 Patent can be validly construed to cover any products imported, made, used,
23 sold or offered for sale by O-Net Shenzhen and Multiwave.

24 63. The '919 Patent is invalid for failure to meet the Conditions of Patentability of 35
25 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject
26 matter; or was used or known by others in this country or was patented or described by a
27 publication before its invention; or was patented or described in a publication or was in public use
28 or for sale more than one year before the date of the patent application; or was not invented by the

1 named inventors; or was invented by another prior to the alleged invention; or was taught by,
2 suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper
3 written description; or is not enabling; or does not disclose the best mode of the invention; and no
4 claim of the '919 Patent can be validly construed to cover any products imported, made, used,
5 sold or offered for sale by O-Net Shenzhen and Multiwave.

6 64. The '129 Patent is invalid for failure to meet the Conditions of Patentability of 35
7 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject
8 matter; or was used or known by others in this country or was patented or described by a
9 publication before its invention; or was patented or described in a publication or was in public use
10 or for sale more than one year before the date of the patent application; or was not invented by the
11 named inventors; or was invented by another prior to the alleged invention; or was taught by,
12 suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper
13 written description; or is not enabling; or does not disclose the best mode of the invention; and no
14 claim of the '129 Patent can be validly construed to cover any products imported, made, used,
15 sold or offered for sale by O-Net Shenzhen and Multiwave.

16 **Third Affirmative Defense**

17 **Damages Limited By 35 U.S.C. § 287**

18 65. As a third and separate affirmative defense to Oplink's patent claims, Defendants
19 allege that Oplink's claim for damages, if any, is limited by 35 U.S.C. § 287.

20 **Fourth Affirmative Defense**

21 **Laches, Waiver, Unclean Hands and/or Equitable Estoppel**

22 66. As a fourth and separate affirmative defense, Defendants allege that Oplink's
23 claims are barred, in whole or in part, by the equitable doctrine of laches, waiver, and/or equitable
24 estoppel. Defendants further allege that Oplink's non-patent claims are barred in whole or in part
25 by unclean hands.

26 **Fifth Affirmative Defense**

27 **Failure to Mitigate**

28 67. As a fifth and separate affirmative defense to Oplink's non-patent claims, to the

1 extent Oplink has sustained any damages allegedly caused by Defendants' conduct, Oplink
 2 cannot recover all or any portion of its claims because Oplink has failed and continues to fail to
 3 exercise reasonable care and diligence to mitigate any alleged damages it has suffered as a
 4 consequence of Defendants' actions.

5 **Sixth Affirmative Defense**

6 **Consent and/or Acquiescence**

7 68. As a sixth and separate affirmative defense to Oplink's non-patent claims,
 8 Defendants allege that Oplink's claims are barred on the grounds of consent and/or acquiescence.

9 **COUNTERCLAIMS FOR DECLARATORY RELIEF**

10 Defendants and counterclaimants O-Net Shenzhen and Multiwave respectfully allege their
 11 counterclaims against Oplink as follows:

12 **Parties**

13 1. O-Net Shenzhen is a Chinese company with its principal place of business at #10-1
 14 South, Maqueling Industrial Park, Nanshan District of Shenzhen, China.

15 2. Multiwave is a Texas corporation with a place of business located at 44790 S.
 16 Grimmer Blvd., Suite 201, Fremont, CA 94538.

17 3. On information and belief, Oplink is a Delaware corporation with its principal
 18 place of business at 46335 Landing Parkway, Fremont, California 94538.

19 **Jurisdiction and Venue**

20 4. These are Counterclaims for a declaratory judgment arising under 28 U.S.C.
 21 §§ 2201 and 2202 and the patent laws of the United States, Title 35 of the United States Code,
 22 and authorized, *inter alia*, by Rule 13 of the Federal Rules of Civil Procedure.

23 5. This Court has subject matter jurisdiction of these Counterclaims pursuant to 28
 24 U.S.C. §§ 1331, 1338, 2001 and 2202.

25 6. Oplink is subject to personal jurisdiction in this judicial district by virtue of its
 26 stipulation transferring Case No. SACV 07-673 AHS (MLGx) from the Central District of
 27 California to the Northern District, and because its principal place of business is located in this
 28 judicial district.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

8. An actual controversy exists between O-Net Shenzhen, Multiwave and Oplink by virtue of the allegations of Oplink's Complaint and Defendants' Answer as to both the invalidity and non-infringement of Oplink's '829, '919 and '129 Patents.

First Counterclaim

Declaration of Non-Infringement

9. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations in paragraphs 1-8 of these Counterclaims as though fully set forth herein.

10. Oplink claims to be the owner of the entire right, title and interest in and to the '829 Patent, the '919 Patent and the '129 Patent.

11. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '829 Patent, the '919 Patent and the '129 Patent.

12. O-Net Shenzhen and Multiwave have not and do not infringe (directly, indirectly or in any other way), and are not liable as an infringer of, any claim of the '829 Patent, the '919 Patent and/or the '129 Patent and Oplink is entitled to no relief for any claim in the Complaint for, *inter alia*, the reasons stated in Defendants' Affirmative Defenses, above, which are incorporated herein by reference.

13. Absent a declaration of non-infringement, Oplink will continue to assert the '829 Patent, the '919 Patent and/or the '129 Patent against O-Net Shenzhen and Multiwave and will in this way cause damage to O-Net Shenzhen and Multiwave.

14. O-Net Shenzhen and Multiwave thus seek a declaration that they do not infringe the '829 Patent, the '919 Patent and/or the '129 Patent and are not liable as infringers.

Second Counterclaim

Declaration of Invalidity of the '829 Patent

15. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations in paragraphs 1-14 of these Counterclaims as though fully set forth herein.

16. Oplink claims to be the owner of the entire right, title and interest in and to the '829 Patent.

17. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '829 Patent.

18. The claims of Oplink's '829 Patent is invalid for failure to meet the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the '829 Patent can be validly construed to cover any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

19. Absent a declaration of invalidity, Oplink will continue to assert the '829 Patent, against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

20. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink's '829 Patent is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112.

Third Counterclaim

Declaration of Invalidity of the '919 Patent

21. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations in paragraphs 1-20 of these Counterclaims as though fully set forth herein.

22. Oplink claims to be the owner of the entire right, title and interest in and to the '919 Patent.

23. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '919 Patent.

24. The claims of Oplink's '919 Patent is invalid for failure to meet the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was

1 patented or described by a publication before its invention; or was patented or described in a
 2 publication or was in public use or for sale more than one year before the date of the patent
 3 application; or was not invented by the named inventors; or was invented by another prior to the
 4 alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is
 5 indefinite; or does not contain a proper written description; or is not enabling; or does not disclose
 6 the best mode of the invention; and no claim of the '919 Patent can be validly construed to cover
 7 any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

8 25. Absent a declaration of invalidity, Oplink will continue to assert the '919 Patent
 9 against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

10 26. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink's
 11 '919 is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35
 12 U.S.C. §§ 101, 102, 103 and 112.

13 **Fourth Counterclaim**

14 **Declaration of Invalidity of the '129 Patent**

15 27. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations
 16 in paragraphs 1-26 of these Counterclaims as though fully set forth herein.

17 28. Oplink claims to be the owner of the entire right, title and interest in and to the
 18 '129 Patent.

19 29. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '129
 20 Patent.

21 30. The claims of Oplink's '129 Patent is invalid for failure to meet the Conditions of
 22 Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention
 23 thereof was not patentable subject matter; or was used or known by others in this country or was
 24 patented or described by a publication before its invention; or was patented or described in a
 25 publication or was in public use or for sale more than one year before the date of the patent
 26 application; or was not invented by the named inventors; or was invented by another prior to the
 27 alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is
 28 indefinite; or does not contain a proper written description; or is not enabling; or does not disclose

1 the best mode of the invention; and no claim of the '129 Patent can be validly construed to cover
2 any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

3 31. Absent a declaration of invalidity, Oplink will continue to assert the '129 Patent
4 against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

5 32. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink's
6 '129 is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35
7 U.S.C. §§ 101, 102, 103 and 112.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Defendants pray for judgment with respect to Oplink's Complaint,
10 Defendants Affirmative Defenses and above Counterclaims, and O-Net Shenzhen's and
11 Multiwave's Motion to Dismiss, or, alternatively, for a More Definite Statement and Motion to
12 Strike as follows:

13 a) Judgment on the First Amended Complaint in favor of Defendants and against
14 Oplink;

15 b) Judgment on each Counterclaim in favor of defendants O-Net Shenzhen and
16 Multiwave and against Oplink;

17 c) Judgment declaring that the claims of the '829 Patent are not infringed by O-Net
18 Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

19 d) Judgment declaring that the claims of the '919 Patent are not infringed by O-Net
20 Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

21 e) Judgment declaring that the claims of the '129 Patent are not infringed by O-Net
22 Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

23 f) Judgment declaring that the claims of the '829 Patent are invalid;

24 g) Judgment declaring that the claims of the '919 Patent are invalid;

25 h) Judgment declaring that the claims of the '129 Patent are invalid;

26 i) A declaration that Defendants' defenses and counterclaims present an exceptional
27 case entitling Defendants to, and therefore awarding, them their reasonable attorneys' fees
28 pursuant to 35 U.S.C. § 285.

j) An award of costs, expenses and attorneys' fees to Defendants; and

k) An award to Defendants of such other and further relief as this Court deems just

and proper.

Dated: November __, 2007

FENWICK & WEST LLP

By: _____
Darryl M. Woo

Attorney for Defendants and Counterclaimants
O-Net Communications (Shenzhen) Limited,
Multiwave Digital Solutions, Inc.,
and Chunmeng Wu, an individual

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants demand a trial by jury on all issues so triable, including without limitation, Oplink's claims and Defendants' affirmative defenses and counterclaims.

Dated: November __, 2007

FENWICK & WEST LLP

By: _____
Darryl M. Woo

Attorney for Defendants and Counterclaimants
O-Net Communications (Shenzhen) Limited
and Multiwave Digital Solutions, Inc., and
Chunmeng Wu, an individual

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

EXHIBIT B

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Chunmeng Wu, an individual

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oplink Communications, Inc.,

Plaintiff,

v.

O-Net Communications (Shenzhen)
Limited,
Multiwave Digital Solutions, Inc.,
Chunmeng Wu, an individual,

Defendants.

Case No. CV 07-4582 JSWMJJ

DEFENDANTS' FIRST AMENDED
ANSWER TO COMPLAINT,
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS

DEMAND FOR JURY TRIAL

Date of Filing: September 17, 2006
Trial Date: None set

FIRST AMENDED ANSWER

Defendants O-Net Communications (Shenzhen) Limited ("O-Net Shenzhen"), Multiwave
Digital Solutions, Inc. ("Multiwave") and Mr. Chunmeng Wu ("Wu") (collectively "Defendants")

1 answer the First Amended Complaint (“Complaint”) of plaintiff Oplink Communications, Inc.
 2 (“Oplink”), following its numbered paragraphs, as follows:

3 **Parties**

4 1. Regarding paragraph 1 of the Complaint, Defendants are informed and believe that
 5 Oplink is a Delaware corporation with its principal place of business at 46335 Landing Parkway,
 6 Fremont, California 94538. Defendants lack knowledge or information sufficient to form a belief
 7 as to the truth or falsity of the remaining allegations in paragraph 1 of the Complaint and
 8 therefore deny them.

9 2. Regarding paragraph 2 of the Complaint, Defendants admit that O-Net Shenzhen
 10 is a Chinese company with its principal place of business at #10-1 South, Maqueling Industrial
 11 Park, Nanshan District of Shenzhen, China. O-Net Shenzhen avers that is a leading Original
 12 Equipment Manufacturer (“OEM”) and Original Design Manufacturer (“ODM”), which supplies
 13 a variety of products to the global optical networking industry. Except as expressly admitted or
 14 averred, the remaining allegations of paragraph 2 are denied.

15 3. Regarding paragraph 3 of the Complaint, Defendants admit that Multiwave is a
 16 Texas corporation with a place of business in Fremont, California. Defendants further admit that
 17 Multiwave is an exclusive sales representative for O-Net Shenzhen products sold in the United
 18 States. Except as expressly admitted or averred, the remaining allegations of paragraph 3 are
 19 denied.

20 4. Regarding paragraph 4 of the Complaint, Defendants admit that Wu is an
 21 individual who resides within the Northern District of California. Defendants aver that Wu was
 22 employed by Oplink until September 2006, and that he is a current employee of Multiwave.
 23 Except as expressly admitted or averred, Defendants deny the allegations in paragraph 4 of the
 24 Complaint.

25 **Jurisdiction and Venue**

26 5. Regarding paragraph 5 of the Complaint, Defendants admit that the Complaint
 27 purportedly alleges claims arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et*
 28 *seq.*, and the statutory and common law of the State of California.

6. Regarding paragraph 6 of the Complaint, Defendants admit that the Northern District of California has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), and has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

7. Regarding paragraph 7 of the Complaint, Defendants admit that under 28 U.S.C. §§ 1391 and 1400, venue is proper in the Northern District of California, where Wu resides and Multiwave has a place of business. Except as expressly admitted or averred, Defendants deny the allegations in paragraph 7 of the Complaint

Oplink's Patents In Suit

8. Regarding paragraph 8 of the Complaint, Defendants admit that U.S. Patent No. 5,661,829 ("829 Patent"), entitled "Optical Isolator," was issued by the Patent and Trademark Office on August 26, 1997. Except as expressly admitted, Defendants deny the allegations of paragraph 8 of the Complaint.

9. Regarding paragraph 9 of the Complaint, Defendants admit that U.S. Patent No. 6,215,919 ("919 Patent"), entitled "Mechanical Optical Switching Device," was issued by the Patent and Trademark Office on April 10, 2001. Except as expressly admitted, Defendants deny the allegations of paragraph 9 of the Complaint.

10. Regarding paragraph 10 of the Complaint, Defendants admit that U.S. Patent No. 6,895,129 ("129 Patent"), entitled "Optical Circulator," was issued by the Patent and Trademark Office on May 17, 2005. Except as expressly admitted, Defendants deny the allegations of paragraph 10 of the Complaint.

11. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 of the Complaint and therefore deny them.

First Claim for Relief

Infringement of U.S. Patent No. 5,661,829

(Against O-Net Shenzhen and Multiwave)

12. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to paragraphs 1-11 of this Answer as though fully set forth herein.

13. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 13 of the Complaint.

14. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 14 of the Complaint.

15. Regarding paragraph 15 of the Complaint, O-Net Shenzhen and Multiwave aver that prior to the receipt of the Original Complaint of plaintiff Oplink filed in the Central District of California on June 7, 2007, they had no notice of Oplink's allegations or charges of infringement, that they have not engaged in any conduct that is objectively reckless with respect to the '829 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 15 of the Complaint.

16. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 16 of the Complaint.

Second Claim for Relief

Infringement of U.S. Patent No. 6,215,919

(Against O-Net Shenzhen and Multiwave)

17. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to paragraphs 1-16 of this Answer as though fully set forth herein.

18. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 18 of the Complaint.

19. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 19 of the Complaint.

20. Regarding paragraph 20 of the Complaint, O-Net Shenzhen and Multiwave aver that prior to the receipt of the Original Complaint of plaintiff Oplink filed in the Central District of California on June 7, 2007, they had no notice of Oplink's allegations or charges of infringement, that they have not engaged in any conduct that is objectively reckless with respect

1 to the '919 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-
 2 Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny
 3 the allegations contained in paragraph 20 of the Complaint.

4 21. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 21 of
 5 the Complaint.

6 **Third Claim for Relief**

7 **Infringement of U.S. Patent No. 6,895,129**

8 **(Against O-Net Shenzhen and Multiwave)**

9 22. O-Net Shenzhen and Multiwave hereby incorporate by reference their responses to
 10 paragraphs 1-21 of this Answer as though fully set forth herein.

11 23. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 23 of
 12 the Complaint.

13 24. To the extent that they can be understood, O-Net Shenzhen and Multiwave deny
 14 the allegations contained in paragraph 24 of the Complaint.

15 25. Regarding paragraph 25 of the Complaint, O-Net Shenzhen and Multiwave aver
 16 that prior to the receipt of the Complaint of plaintiff Oplink filed in the Central District of
 17 California on August 25, 2007, they had no notice of Oplink's allegations or charges of
 18 infringement, that they have not engaged in any conduct that is objectively reckless with respect
 19 to the '129 Patent, and that Oplink lacks any basis to allege willful infringement on the part of O-
 20 Net Shenzhen or Multiwave. Except as expressly averred, O-Net Shenzhen and Multiwave deny
 21 the allegations contained in paragraph 25 of the Complaint.

22 26. O-Net Shenzhen and Multiwave deny the allegations contained in paragraph 26 of
 23 the Complaint.

24 **Fourth Claim for Relief**

25 **Trade Secret Misappropriation Under the Uniform Trade Secrets Act**

26 **(Against Multiwave and Wu)**

27 27. Multiwave and Wu hereby incorporate by reference their responses to paragraphs
 28 1-26 of this Answer as though fully set forth herein.

28. Multiwave and Wu lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 28 and therefore deny them.

29. Multiwave and Wu lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 29 and therefore deny them.

30. Regarding paragraph 30 of the Complaint, Wu admits that he is a former Oplink employee, that he began his employment with Oplink on or about August 29, 2003, and that he left that employ on or about September 8, 2006. Defendant Wu admits that he signed a document entitled, "Employee Confidential Information and Inventions Agreement," and a document entitled, "Separation Agreement." Except as expressly admitted, Defendant Wu denies the allegations of paragraph 30. Except as expressly admitted, Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 30 and therefore denies them.

31. Multiwave and Wu deny the allegations contained in paragraph 31 of the Complaint.

32. Regarding paragraph 32 of the Complaint, Multiwave and Wu admit that Wu became an employee of Multiwave subsequent to his employment by Oplink and that Wu is currently a Multiwave employee. Multiwave and Wu further admit that Multiwave is an exclusive sales representative for O-Net Shenzhen products sold in the United States. Except as expressly admitted, Multiwave and Wu deny the allegations of paragraph 32.

33. Multiwave and Wu deny the allegations contained in paragraph 33 of the Complaint.

34. Multiwave and Wu deny the allegations contained in paragraph 34 of the Complaint.

35. Multiwave and Wu deny the allegations contained in paragraph 35 of the Complaint.

Fifth Claim for Relief

Breach of Duty of Loyalty

(Against Wu)

36. Wu hereby incorporate by reference his responses to paragraphs 1-35 of this Answer as though fully set forth herein.

37. Regarding paragraph 37 of the Complaint, Wu admits that he held the title of Senior Director of Business Development and Customer Support for Oplink. Except as expressly admitted, he denies the allegations contained in paragraph 37 of the Complaint.

38. Regarding paragraph 38 of the Complaint, Wu admits that he recommended that Oplink enter into a sales representation agreement with Multiwave, but avers that any decision regarding whether to enter into such an agreement and its terms was made by others at Oplink. Wu admits that he had previously worked with Multiwave at another employer. Except as expressly admitted, Wu denies the allegations contained in paragraph 38 of the Complaint.

39. Wu lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 39 and therefore denies them

40. Wu denies the allegations contained in paragraph 40 of the Complaint.

41. Wu denies the allegations contained in paragraph 41 of the Complaint.

42. Wu denies the allegations contained in paragraph 42 of the Complaint.

43. Wu denies the allegations contained in paragraph 43 of the Complaint.

Sixth Claim for Relief**Unfair Competition****(Against Multiwave)**

44. Multiwave hereby incorporates by reference its responses to paragraphs 1-43 of this Answer as though fully set forth herein.

45. Multiwave denies the allegations contained in paragraph 45 of the Complaint.

46. Multiwave denies the allegations contained in paragraph 46 of the Complaint.

Seventh Claim for Relief**Breach of Contract****(Against Wu)**

47. Wu hereby incorporates by reference his responses to paragraphs 1-46 of this Answer as though fully set forth herein.

48. Wu admits that he signed a document entitled, "Employee Confidential Information and Inventions Agreement." Except as expressly admitted, Wu denies the allegations of paragraph 48.

49. Wu admits that he signed a document entitled, "Separation Agreement." Except as expressly admitted, Wu denies the allegations of paragraph 49.

50. Wu lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 50 and therefore denies them.

51. Wu denies the allegations contained in paragraph 51 of the Complaint.

52. Wu denies the allegations contained in paragraph 52 of the Complaint.

Eighth Claim for Relief

Intentional Interference with Contractual Relations

(Against Multiwave)

53. Multiwave hereby incorporates by reference its responses to paragraphs 1-52 of this Answer as though fully set forth herein.

54. Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 54 and therefore denies them.

55. Multiwave lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 55 and therefore denies them.

56. Multiwave admits that it was aware that Wu was formerly employed by Oplink and had signed agreements relating to his employment. Except as expressly admitted, Multiwave denies the allegations of paragraph 56.

57. Multiwave denies the allegations contained in paragraph 57 of the Complaint.

58. Multiwave denies the allegations contained in paragraph 58 of the Complaint.

REQUESTED RELIEF BY OPLINK

Defendants deny that Oplink is entitled to any relief

AFFIRMATIVE DEFENSES

Defendants hereby assert affirmative defenses to the Complaint as follows:

First Affirmative Defense

Failure To State A Claim

59. As a first and separate affirmative defense, Defendants allege that the Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

60. O-Net Shenzhen and Multiwave, *inter alia*, have moved to dismiss Oplink's allegations of inducement of infringement in paragraphs 14, 19 and 24 of the Complaint and Oplink's allegations of willful infringement in paragraphs 15, 20 and 25 of the Complaint, or, alternatively, for a more definite statement, as well as to strike the requests for relief related to these allegations.

Second Affirmative Defense

Invalidity

61. As a second and separate affirmative defense to Oplink's patent claims, Defendants allege that the claims of the '829 Patent, the '919 Patent and/or the '129 Patent are invalid.

~~62. 61. As a second and separate affirmative defense, Defendants allege that the claims of the '829 Patent, the '919 Patent and/or the '129 Patent are invalid for failure to satisfy one or more of~~
The '829 Patent is invalid for failure to meet the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the ~~'829 Patent, the '919 Patent and/or the '129 Patent~~ can be validly

1 construed to cover any products imported, made, used, sold or offered for sale by plaintiff O-Net
 2 Shenzhen and Multiwave.

3 63. The '919 Patent is invalid for failure to meet the Conditions of Patentability of 35
 4 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject
 5 matter; or was used or known by others in this country or was patented or described by a
 6 publication before its invention; or was patented or described in a publication or was in public use
 7 or for sale more than one year before the date of the patent application; or was not invented by the
 8 named inventors; or was invented by another prior to the alleged invention; or was taught by,
 9 suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper
 10 written description; or is not enabling; or does not disclose the best mode of the invention; and no
 11 claim of the '919 Patent can be validly construed to cover any products imported, made, used,
 12 sold or offered for sale by O-Net Shenzhen and Multiwave.

13 64. The '129 Patent is invalid for failure to meet the Conditions of Patentability of 35
 14 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject
 15 matter; or was used or known by others in this country or was patented or described by a
 16 publication before its invention; or was patented or described in a publication or was in public use
 17 or for sale more than one year before the date of the patent application; or was not invented by the
 18 named inventors; or was invented by another prior to the alleged invention; or was taught by,
 19 suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper
 20 written description; or is not enabling; or does not disclose the best mode of the invention; and no
 21 claim of the '129 Patent can be validly construed to cover any products imported, made, used,
 22 sold or offered for sale by O-Net Shenzhen and Multiwave.

23 **Third Affirmative Defense**

24 **Damages Limited By 35 U.S.C. § ~~187~~287**

25 65. ~~62.~~As a third and separate affirmative defense to Oplink's patent claims,
 26 Defendants allege that Oplink's claim for damages, if any, is limited by 35 U.S.C. § 287.

27 **Fourth Affirmative Defense**

28 **Laches, Waiver, Unclean Hands and/or Equitable Estoppel**

66. ~~63.~~ As a fourth and separate affirmative defense, Defendants allege that Oplink's claims are barred, in whole or in part, by the equitable doctrine of laches, waiver, ~~unclean hands~~, and/or equitable estoppel. Defendants further allege that Oplink's non-patent claims are barred in whole or in part by unclean hands.

Fifth Affirmative Defense

Failure to Mitigate

67. ~~64.~~ As a fifth and separate affirmative defense to Oplink's non-patent claims, to the extent Oplink has sustained any damages allegedly caused by Defendants' conduct, Oplink cannot recover all or any portion of its claims because Oplink has failed and continues to fail to exercise reasonable care and diligence to mitigate any alleged damages it has suffered as a consequence of Defendants' actions.

Sixth Affirmative Defense

Consent and/or Acquiescence

68. ~~65.~~ As a sixth and separate affirmative defense to Oplink's non-patent claims, Defendants allege that Oplink's claims are barred on the grounds of consent and/or acquiescence.

~~Seventh Affirmative Defense~~

~~Uncertainty~~

~~66. As a seventh and separate affirmative defense, each claim is barred, in whole or in part, because Oplink fails to describe the facts supporting its claims with sufficient certainty.~~

COUNTERCLAIMS FOR DECLARATORY RELIEF

Defendants and counterclaimants O-Net Shenzhen and Multiwave respectfully allege their counterclaims against Oplink as follows:

Parties

1. O-Net Shenzhen is a Chinese company with its principal place of business at #10-1 South, Maqueling Industrial Park, Nanshan District of Shenzhen, China.
2. Multiwave is a Texas corporation with a place of business located at 44790 S. Grimmer Blvd., Suite 201, Fremont, CA 94538.

3. On information and belief, Oplink is a Delaware corporation with its principal place of business at 46335 Landing Parkway, Fremont, California 94538.

Jurisdiction and Venue

4. These are Counterclaims for a declaratory judgment arising under 28 U.S.C. §§ 2201 and 2202 and the patent laws of the United States, Title 35 of the United States Code, and authorized, *inter alia*, by Rule 13 of the Federal Rules of Civil Procedure.

5. This Court has subject matter jurisdiction of these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 2001 and 2202.

6. Oplink is subject to personal jurisdiction in this judicial district by virtue of its stipulation transferring Case No. SACV 07-673 AHS (MLGx) from the Central District of California to the Northern District, and because its principal place of business is located in this judicial district.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400.

8. An actual controversy exists between O-Net Shenzhen, Multiwave and Oplink by virtue of the allegations of Oplink's Complaint and Defendants' Answer as to both the invalidity and non-infringement of Oplink's '829, '919 and '129 Patents.

First Counterclaim

Declaration of Non-Infringement

9. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations in paragraphs 1-8 of these Counterclaims as though fully set forth herein.

10. Oplink claims to be the owner of the entire right, title and interest in and to the '829 Patent, the '919 Patent and the '129 Patent.

11. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the '829 Patent, the '919 Patent and the '129 Patent.

12. O-Net Shenzhen and Multiwave have not and do not infringe (directly, indirectly or in any other way), and are not liable as an infringer of, any claim of the '829 Patent, the '919 Patent and/or the '129 Patent and Oplink is entitled to no relief for any claim in the Complaint

1 for, *inter alia*, the reasons stated in Defendants' Affirmative Defenses, above, which are
2 incorporated herein by reference.

3 13. Absent a declaration of non-infringement, Oplink will continue to assert the '829
4 Patent, the '919 Patent and/or the '129 Patent against O-Net Shenzhen and Multiwave and will in
5 this way cause damage to O-Net Shenzhen and Multiwave.

6 14. O-Net Shenzhen and Multiwave thus seek a declaration that they do not infringe
7 the '829 Patent, the '919 Patent and/or the '129 Patent and are not liable as infringers.

8 **Second Counterclaim**

9 **Declaration of Invalidity of the '829 Patent**

10 15. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations
11 in paragraphs 1-14 of these Counterclaims as though fully set forth herein.

12 16. Oplink claims to be the owner of the entire right, title and interest in and to the
13 ~~'829 Patent, the '919 Patent and the '129'829 Patent.~~

14 17. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the ~~'829~~
15 ~~Patent, the '919 Patent and the '129'829 Patent.~~

16 18. The claims of Oplink's ~~'829 Patent, the '919 Patent and/or the '129 Patent~~ are is
17 invalid for failure to ~~satisfy one or more of meet~~ the Conditions of Patentability specified in 35
18 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject
19 matter; or was used or known by others in this country or was patented or described by a
20 publication before its invention; or was patented or described in a publication or was in public use
21 or for sale more than one year before the date of the patent application; or was not invented by the
22 named inventors; or was invented by another prior to the alleged invention; or was taught by,
23 suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper
24 written description; or is not enabling; or does not disclose the best mode of the invention; and no
25 claim of the ~~'829 Patent, the '919 Patent and/or the '129'829 Patent~~ can be validly construed to
26 cover any products imported, made, used, sold or offered for sale by ~~plaintiff~~ O-Net Shenzhen and
27 Multiwave.

19. Absent a declaration of invalidity, Oplink will continue to assert the ‘829 Patent, ~~the ‘919 Patent and/or the ‘129 Patent~~ against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

20. O-Net Shenzhen and Multiwave seek a declaration that the claims of Oplink’s ‘829 Patent is invalid for failure to satisfy one or more of the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112.

Third Counterclaim

Declaration of Invalidity of the ‘919 Patent

21. O-Net Shenzhen and Multiwave hereby incorporate by reference their allegations in paragraphs 1-20 of these Counterclaims as though fully set forth herein.

22. Oplink claims to be the owner of the entire right, title and interest in and to the ‘919 Patent.

23. Oplink has charged O-Net Shenzhen and Multiwave with infringement of the ‘919 Patent.

24. The claims of Oplink’s ‘919 Patent is invalid for failure to meet the Conditions of Patentability specified in 35 U.S.C. §§ 101, 102, 103 and 112 because the alleged invention thereof was not patentable subject matter; or was used or known by others in this country or was patented or described by a publication before its invention; or was patented or described in a publication or was in public use or for sale more than one year before the date of the patent application; or was not invented by the named inventors; or was invented by another prior to the alleged invention; or was taught by, suggested by, and/or obvious in view of, the prior art; or is indefinite; or does not contain a proper written description; or is not enabling; or does not disclose the best mode of the invention; and no claim of the ‘919 Patent can be validly construed to cover any products imported, made, used, sold or offered for sale by O-Net Shenzhen and Multiwave.

25. Absent a declaration of invalidity, Oplink will continue to assert the ‘919 Patent against O-Net Shenzhen and Multiwave and will in this way cause damage to Oplink.

Declaration of Invalidity of the '129 Patent

PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgment with respect to Oplink's Complaint, Defendants Affirmative Defenses and above Counterclaims, and O-Net Shenzhen's and Multiwave's Motion to Dismiss, or, alternatively, for a More Definite Statement and Motion to Strike as follows:

a) Judgment on the First Amended Complaint in favor of Defendants and against Oplink;

b) Judgment on each Counterclaim in favor of defendants O-Net Shenzhen and Multiwave and against Oplink;

c) Judgment declaring that the claims of the '829 Patent are not infringed by O-Net Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

d) Judgment declaring that the claims of the '919 Patent are not infringed by O-Net Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

e) Judgment declaring that the claims of the '129 Patent are not infringed by O-Net Shenzhen or Multiwave and that O-Net Shenzhen and Multiwave are not liable as infringers;

f) Judgment declaring that the claims of the '829 Patent are invalid;

g) Judgment declaring that the claims of the '919 Patent are invalid;

h) Judgment declaring that the claims of the '129 Patent are invalid;

i) A declaration that Defendants' defenses and counterclaims present an exceptional case entitling Defendants to, and therefore awarding, them their reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

j) An award of costs, expenses and attorneys' fees to Defendants; and

k) An award to Defendants of such other and further relief as this Court deems just and proper.

1 Dated: ~~September 17,~~November, 2007

FENWICK & WEST LLP

2
3 By: /s/
4 Darryl M. Woo

5 Attorney for Defendants and Counterclaimants
6 O-Net Communications (Shenzhen) Limited,
7 Multiwave Digital Solutions, Inc.,
8 and Chunmeng Wu, an individual

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendants demand a trial by
11 jury on all issues so triable, including without limitation, Oplink's claims and Defendants'
12 affirmative defenses and counterclaims.

13 Dated: ~~September 17,~~November, 2007

FENWICK & WEST LLP

14
15 By: /s/
16 Darryl M. Woo

17 Attorney for Defendants and Counterclaimants
18 O-Net Communications (Shenzhen) Limited
19 and Multiwave Digital Solutions, Inc., and
20 Chunmeng Wu, an individual

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

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